IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION No.378 OF 2006

Shri Narayan Tukaram Phasale .. ..Petitioner
Versus
The Divisional Commissioner,
Nashik Division, Nashik & Anr. .. ..Respondents

Mr.R.V.More for petitioner
Ms Vaidehi Mhaispurkar, AGP for respondent no.1
Mr.M.S.Karnik for respondent no.2

CORAM : S. C. DHARMADHIKARI, J

DATE : 23RD FEBRUARY, 2006

P.C.:

1. The Petitioner is a member of Panchayat Samiti Nashik. Upon a complaint made by the local M.L.A. (Respondent no.2) the 1st Respondent initiated proceedings under Section 16(N) of the Maharashtra Zilla Parishads & Panchayat Samitis Act, 1961.

2. The complaint of the respondent no.1 against the petitioner is that the petitioner contested the general election of Panchayat Samiti Nasik held in the year 2002 from Gan Gowardhan Constituency, which was reserved for

Scheduled Tribes Category. In the said election he was elected and thereafter he is continuing as a member of Panchayat Samiti Nashik.

3. It is alleged in the complaint of the 2nd respondent that after the election, which was held in the year 2002, third daughter is born to the petitioner on 27th November, 2003. It is alleged that the petitioner married one Chababai and after two children, as on the date of election, a third child has been born on 27.11.2003.

4. Upon such complaint, proceedings were commenced, a show cause notice issued, replies/explanation thereto sought and after the petitioner as well as the persons deposing in his favour were examined including wife and her father, the impugned order disqualifying the petitioner has been passed by the 1st Respondent Commissioner.

5. From a perusal of the order passed by the 1st respondent, it is apparent that the case of the petitioner is that he has divorced his wife Chababai way back in the year 1999 and the divorce is customary. He

submits that upon cessation of relationship as husband and wife the said Chababai has been residing separately with her father and there is no occasion for petitioner having any access to her and or matrimonial relations continuing thereafter. In these circumstances, it is not conclusively established that the third child born to Chababai was from the wedlock of the petitioner and/or petitioner was the father of the same.

6. In such state of affairs, the report of local authorities including from the Primary Health Centre was summoned by the Commissioner and Officers subordinate to him. Similarly, records of the Grampanchayat were also summoned. It appears that the complaint was sought to be examined on the basis that there may not be entry in the register made by the concerned Grampanchayat but contemporaneous record would establish that the said Chababai delivered the child while residing and/or having relationship with the petitioner. It was also tried to be supported by the proof of the said couple residing together viz. from the extract of the voters list.

7. Relying upon this record as also the statements

of witnesses, after opportunity being given for a limited nature to cross examine them, the Commissioner has been persuaded to pass the impugned order disqualifying the petitioner from continuing as a member of Panchayat Samiti Nasik.

8. In the light of serious grievance made by the petitioner, I issued notice to the 2nd respondent and also directed the learned AGP to produce the original files. The original documents as also the noting in the files were made available for perusal of the court. After perusal of the record it appears that this is a case in which the 2nd respondent forwarded a complaint without documentary proof. It is relying upon this complaint that enquiries commenced and during the course of such enquiries that the subordinate officials in the revenue and other departments of the State forwarded reports and documents. There are extracts which are forwarded from the registers which are maintained while giving benefits and concessions to new born child and mother. There are welfare schemes initiated by the State. Similarly, from the Primary Health Centre, it is conveyed that the said Chababai delivered the third child, however, because of the non cooperation of the

Grampanchayat and Gramsevk no entries in the death and birth registers were made. The Commissioner proceeded to rely upon copies of the extract and reports noted above.

9. In my view, after perusing the record and scrutinising the order in that light, despite an application placed on record by the petitioner's advocate to give him an opportunity to inspect the original documents as also to get copies thereof, it does not appear that all the documents and extracts were made available to him. It was desirable that the same was made available before the petitioner could proceed to effectively deal with the charge against him.

10. In my view, considering the seriousness of the matter, it would be have been appropriate had the Commissioner proceeded in a proper manner and in accordance with the principles of natural justice. The reports and documents should have been made available to the petitioner. More so, when there is no dispute about the birth of a third child but whether the child is from the relationship of the petitioner with Chababai and the issue is whether in such proceeding the divorce deed and

its genuineness and validity can be scrutinised. Before taking cognizance of the grievance in that behalf, it was incumbent upon the petitioner to have given opportunity to the petitioner to inspect the record and only thereafter proceed in the matter.

11. It is in this backdrop, that I am interfering with this order, in a petition under Article 227 of the Constitution of India. However, at the same time, I am also view that interest of justice would be served, if the compliant of the 2nd respondent is once again taken up for consideration by the Commissioner and deal with in accordance with law after all opportunities given to the petitioner as well as to the respondents to inspect the documents and/or copies thereof. While issuing the above direction, I have taken note of submission of Shri Karnik that beyond making a complaint and geting notices issued there was nothng whch the respondent no.2 needed to do in the matter. The 2nd Respondent could have no further role to play in the matter. He relies upon a decision of Single Judge of this Court in the case of **Suvarna Prakash Patil vs. Anil Hindurao Powar and ors. reported 2004(1) ALL MR 61.**

12. While it is true that it is not expected from a complainant to furnish meticulous and complete details of his grievance but in the facts and circumstances of the present case, beyond making a grievance by a letter and the same having been treated as a complaint, it does not appear that the respondent no.2 has participated in the matter. It is the adjudicating authority who has taken upon the task of not only calling for the records and documents from the authorities but also relying upon them and passing the impugned order. There is nothing on record which indicates that it was the 2nd respondent who after addressing a letter made the necessary applications and at his instance the enquiry is commenced and documents were summoned. It is also because of these factors that I am interfering in writ jurisdiction with this order and issue the above directions.

13. Rule made absolute in the above terms. The petitioner as well as respondent no.2, in case, if he so desires shall appear before the 1st respondent on 13th March 2006 and respondent no.1 thereupon shall conclude the proceedings within a period of eight weeks from the date of such appearance.

14. The learned AGP to communicate the order forthwith to the authorities so that the process for filling the vacancy does not proceed further.

(S.C.Dharmadhikari,J.)